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EXAMINER

HESS, DANIEL A

ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/816,749
Filing Date: April 02, 2004
Appellant(s): DURRANT ET AL.

Karl D. Kovach
For Appellant

EXAMINER'S ANSWER

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This is in response to the appeal brief filed 4/4/2006 appealing from the Office action mailed 9/8/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

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6,745,971

Renzoni

6-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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Claims 11, 13, 15, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanescu (US 6,784,802) in view of Renzoni (US 6,745,971).

Re claim 11: For the sake of clarity individual limitations are listed below, with a discussion after each limitation of how Stanescu teaches or renders obvious the claimed limitation.

11. A device comprising:

a fiber optic cable having a fiber optic connector;

a transponder attached to the fiber optic connector;

Stanescu teaches (column 5, lines 45-65):

“The Transponders (Tags)

These are smart labels that contain information, which can be both read and written (modified), through a wireless interface.

One transponder will be attached at each end of the patch cord or cable.

They can be embedded (over-molded) in the plugs or their boots, glued or simply wrapped around if incorporated in the form of a label.

They can be programmed at installation, e.g., through the "Local Monitoring Unit" or "Field Programmable Unit," can be factory installed and programmed, and can be used to trace the cords for stock or asset management.

The transponder corresponding to each plug stores information about the cable and the cabling system at its level in the hierarchy.

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They can be either mounted on copper or fiber optic patch cords.”

See also figure 1, which depicts a transponder installed on the plug of a cable.

a substrate adapted for attachment to a panel of a host device;

See figure 1: a patch panel is clearly shown in Stanescu, having a substrate that forms the backing. This patch panel is also discussed (column 6, line 12). In fact, a comparison of figure 1 of Stanescu with the drawings of the Instant invention show the structural commonality.

an antenna attached to the substrate;

Stanescu further teaches (column 6, lines 4+):

“The readers include miniature antennas attached to each jack.” See figure 1: The substrate (panel) is shown to have reader antennas thereon.

and a transceiver electrically connected to the antenna so as to form a reader which is capable of activating and interrogating the transponder when the transponder is sufficiently close to the antenna,

Here it is to be noted that the readers are indeed transceivers, in as much as they communicate with the transponders. The transponders communicate with their respective jacks when there is sufficient proximity.

and wherein the fiber optic cable has a length, and wherein the transponder includes information related to [the length of] the fiber optic cable.

Every optical fiber has a length. Stanescu recites that “the transponder corresponding to each plug stores information about the cable” (column 5, lines 60-61).

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Stanescu is silent on whether "information about the cable" includes length.

Renzoni teaches (column 4, lines 40-45) labeling information on a fiber spool including connector type (same information as claim 13), fiber length (same information as claim 11) and purchase date (same information as claim 17).

In view of Renzoni's information, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known connector type information (claim 13), fiber length (claim 11) and purchase date (claim 17) in the transponder tag and communication system of Stanescu because as Renzoni clearly recognizes, these are all relevant data in putting together a good fiber network. Connectors must match, fiber length must be compensated for by necessary amplification, and purchase date indicates how old the fiber is. Stanescu has (column 6, line 50 to column 7, line 40) a local monitoring unit and a central monitoring unit which gather data on the cables via the transponders. This data collection system is valuable for maintainers of the network, and would clearly be improved by the addition of other data related to the network.

Re claims 15, 19: Fiber grade matching is important in building a fiber-optic network because one would not want to spoil a high grade network with a low grade fiber. (By way of example, Stoy (US 5,066,091) makes mention (column 14, lines 62-68) of the value of grade matching in replacing fibers in a system.)

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Warranty information is also understood in the art to be useful when maintaining a fiber optic network because if a fiber in the network is under warranty, it might be possible to recoup its costs.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include both grade and warranty information in the transponder of Stanescu along with the various other information that is already present because all of these pieces of information are relevant in building and maintaining an optical fiber network. Stanescu has (column 6, line 50 to column 7, line 40) a local monitoring unit and a central monitoring unit which gather data on the cables via the transponders. This data collection system is valuable for maintainers of the network, and would clearly be improved by the addition of other data related to the network.

(10) Response to Argument

The primary reference employed by the Examiner, Stanescu, alone teaches a system that is structurally identical to the Instant Invention as claimed. The only thing preventing Stanescu from being usable in a 35 USC 102 rejection is that even though Stanescu states that “the transponder corresponding to each plug stores information about the cable” (column 5, lines 60-61) he is silent on ‘information about the cable’ including such things as length, industrial standard, fiber grade, purchase date and warranty information.

Each of these various pieces of information, length, industrial standard, fiber grade, purchase data and warranty information fall in the category of ‘information about the cable’ (Stanescu, column 5, line 60), and one of ordinary skill in the art would clearly have been motivated to include these because these are all properties that are important in constructing a high quality data network.

Stanescu has (column 6, line 50 to column 7, line 40) a local monitoring unit and a central monitoring unit which gather data on the cables via the transponders. This data collection system is valuable for maintainers of the network, and would clearly be improved by the addition of other data related to the network.

Renzoni was applied as a secondary reference merely to demonstrate that marking a fiber section with such things as connector type, fiber length and grade is known in the prior art of

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record. Renzoni is not employed to teach those structural features which Stanescu has in totality; Stanescu already teaches every structural limitation.

Appellant's argument Renzoni lacks such structural features as a transponder, a substrate adapted for attachment to a host device and an antenna fails because Renzoni is not employed to show any of these features. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Renzoni serves a very specific purpose, which is to illustrate that it is known to label optical fibers with such information as connector type, fiber length, and purchase date. This illustrates that all these are very reasonable data to include when describing optical fibers.

Stanescu states that "the transponder corresponding to each plug stores information about the cable" but leaves open what can be "information about the cable." Renzoni clearly fills some of these blanks: connector type, fiber length, and purchase date.

Appellant contends on page 13, line 10 that Stanescu lacks that "the fiber optic cable has a length." This is very clearly inherent since any fiber optic cable has a length. Further, Appellant contends on page 13, line 11 that Stanescu lacks that "the transponder has information related to the length of the optical cable." It is agreed that Stanescu fails to specifically state that such info is part of the info contained in the transponder which contains "information about the cable" (column 5, lines 60-61 of Stanescu). As such Renzoni was employed, as stated supra, as a secondary reference under 103.

On pages 13-14, with respect to Renzoni, the Appellant uses a piecemeal analysis by arguing the absence of limitations in Renzoni that are clearly present in Stanescu, our primary reference. As noted above, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

On page 15, lines 2+, the Appellant argues that Renzoni “fails to provide the teaching or motivation to impart with the transponder information related to the length of the fiber optical cable.”

Motivation does not even have to be explicitly recited in the reference. MPEP Section 706.02(j) states, “to establish a prima facie case of obviousness... there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.” *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Accordingly, motivation has been provided in the Final Office Action, page 5, lines 12-14, wherein the Examiner stated, “these are all relevant data in putting together a good fiber network. Connectors must match, fiber length must be compensated for by necessary amplification, and purchase date indicates how old the fiber is.” Failure to have this data would clearly impact the system being designed.

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Regarding the Appellant's arguments (pages 17-23) with respect to claims 13, 15, 17 and 19, the Appellant has made essentially the same arguments as with claim 11. As such, the Examiner's response supra addresses these arguments as well.

In regards to claim 15, the Examiner made mention of Stoy (US 5,066,091). As discussed, Stanescu states that "the transponder corresponding to each plug stores information about the cable" but leaves open what can be "information about the cable." Stoy fills in this blank with fiber grade by specifically showing that it is known to label fibers with fiber grade.

In regards to claim 19, the Examiner has observed that a "warranty date" is just another piece of data that would be useful to include in a transponder such as Stanescu that "stores information about the cable". This would enable the system to automatically check warranty information as it automatically confirms other information while the network is constructed.

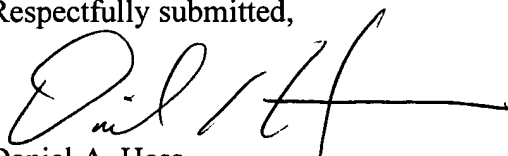
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Daniel A. Hess

Conferees:

Darren Schuberg 

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Steven Paik
~~Stephen Paik~~ 